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ABSTRACT

This paper examines issues relating to suspension and expulsion of students with disabilities in Iowa and presents procedures and best practices which satisfy legal requirements and are based on judicial rulings. The following issues are considered concerning suspension: suspension of a special education student for more than 10 consecutive school days; limits on total accumulation of suspension days in a school year; inclusion of in-school suspension in allowed cumulative totals; Individualized Education Program (IEP) considerations in suspensions; possible negative consequences of suspensions; and alternatives to suspension. Principles of expulsion discussed include due process procedures under the Individuals with Disabilities Education Act; expulsion as a change of placement; requirements of reevaluation; development of an educational program for the expelled student with disabilities; and legal recommendations to avoid expulsion as an option. Best practices identified include: adherence to the required procedural steps for suspension; coordination with the student's IEP team; holding an IEP meeting after the student has been suspended for a total of 5 days; and consultation with the school district's attorney before or during the suspension procedure. (DB)

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An Examination of Suspension and Expulsion Issues for Students with Disabilities in Iowa

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Foreword

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Executive Summary

An Examination of Suspension and Expulsion Issues for Students with Disabilities in Iowa

One of the major issues for school administrators involves knowing when disciplinary procedures, particularly suspension and expulsion, can be used with special education students. Because neither the Education for All Handicapped Children Act of 1975 [EAHCA] (currently the Individuals with Disabilities Education Act or IDEA) nor Section 504 of the Rehabilitation Act of 1973 addresses disciplinary procedures for students with disabilities, guidance is sought from other sources. These sources include policy letters from the U. S. Office of Special Education Programs (OSEP), decisions by state education agencies (SEAs) pursuant to IDEA, investigations and findings of the Office for Civil Rights (OCR), and court decisions.

Unfortunately, consensus is not always reached when educators, parents and advocacy groups attempt to interpret the policy letters, letters of findings, and court decisions. Compounding the problem is the fact that certain issues continue to go unanswered and a body of litigation pertaining to discipline remains contradictory.

The purpose of this paper is to examine and delineate the major issues relating to suspension and expulsion. Issues lacking clarity or guidance will be identified and discussed. The last section of the paper will outline suspension and expulsion procedures that the Bureau of Special Education believes will satisfy current legal requirements and recommended best practices based on judicial cases and rulings.

Suspensions

The first student suspension case to be decided by the U. S. Supreme Court was *Goss v. Lopez*. This case established short-term (10 days or less) suspension procedures to be used for all public school students (with and without disabilities): (1) oral or written notice to the student of the charges and the basis for them, and (2) an opportunity for the student to tell his or her version, in response to accusations.

Issue: Can a special education student be suspended for more than 10 consecutive school days?

One issue that is clearly articulated by OSEP, OCR, and court decisions is the understanding that students with disabilities cannot receive suspensions totaling more than 10 consecutive school days. According to *Honig v. Doe*, a district would need to obtain a court injunction if the agency believes because of misconduct or disability the student would be a danger to himself or others. This is only true for one-sided (unilateral) action by the district. It appears the courts have not tolerated attempts to disguise suspensions by using different terminology, e.g., exclusion or timeout.

When an administrator uses suspension for a student with disabilities, best practice suggests the suspension to be used as an intervention to teach appropriate behavior or to protect the safety and welfare of pupils, not merely as a punishment for a student's inappropriate behavior.

Issue: Is a total accumulation of 10 days of suspensions in a school year prohibited?

Courts, OCR, and OSEP have not been as lucid regarding allowable, cumulative suspensions for nonconsecutive days during an academic school year. Although OCR has said that each case must be decided on an individual basis, OCR has interpreted most accumulations in excess of 10 days to constitute a violation. A review of the literature shows that caution is encouraged based on *Honig v. Doe*. Although the Supreme Court decision did not specifically address the 10 cumulative school day issue, the court accepted the position of the U. S. Department of Education that suspensions in excess of 10 days constitute a change in placement. Therefore, a school district places itself in a vulnerable position when using a series of suspensions that collectively exceed 10 days.

Issue: Does in-school suspension count in the cumulative total?

In-school suspensions count in the cumulative total when the nature and quality of the suspension program is not comparable to the nature and quality of the special education program being provided. Since 1987, the Iowa DE has considered in-school suspension the same as out-of-school suspension, both in terms of procedures to be used and number of days to be counted. However, the Iowa Board of Education has encouraged the use of in-school suspension *in lieu of* out-of-school suspension.

A review of OCR letters of findings reveals that a district is well-advised to adopt a written policy for implementing in-school suspensions. In-school suspensions should involve a continuation of IEP goals and objectives.

IEP considerations for student removal.

One consideration that must be addressed when including a behavior management plan in the IEP document is the importance of including an *individualized* plan and not using the same plan for all students in a program.

Another issue that IEP teams must address is making certain that an administrator is not given unilateral authority to suspend a student for more than 10 days if the management system calls for a visit to the principal's (or designee's) office which might result in the principal calling the parents to notify them to remove the student from school because of inappropriate behavior.

A third factor to consider is the law that provides every special education student a right to a free appropriate public education. If a student is suspended more than 10 times, even though the IEP allows the consequence, the burden of proof clearly rests with the district to prove that the student is not being denied a free appropriate public education, that the removal is appropriate, and that the intervention is working.

A fourth emerging issue is how far the school must go in informing the parents of their rights, e.g., is the IEP multidisciplinary team obligated to inform the parent that the IEP might not be upheld by an administrative law judge?

Possible negative consequences of suspension.

Some educators utilize suspension to maintain order. For those students, when suspensions haven't changed the inappropriate behavior, continued suspensions cannot be supported as a continuing behavior management tool. Suspensions can be misused and the outcome can be detrimental to the student, e.g., denying the student access to a free appropriate public education.

Exploring alternatives to suspensions.

Districts need to adopt alternative solutions when applying disciplinary measures. A proactive approach to analyzing situations in a problem solving way is preferred to reacting in a blameful and judgmental manner leading to punishment. According to the *Honig v. Doe* decision, schools can use the normal disciplinary procedures for children with disabilities, including study carrels, timeout, detention, the restriction of privileges, and temporary suspension of up to 10 school days (Yell, 1989). Other alternatives to consider are additional related services, increased time in the current special program, and involvement with programs funded by other agencies.

Expulsion

When expulsion is being considered for a student, IDEA due process procedures and safeguards must be followed. When a student is removed from a placement for a period exceeding 10 days, this becomes a change of placement, a point on which all courts unanimously have agreed.

Before a change of placement consideration can occur, an IEP meeting will need to be held. The district must provide notification to the parent or guardian which includes the purpose for the meeting and specific, detailed information regarding the misconduct. This notice must be given a reasonable time prior to the meeting to ensure purposeful involvement and participation by the parent.

When considering change of placement, a reevaluation must be conducted. The results are needed to determine whether the behavior is a manifestation of the student's disability and whether the student's current placement is appropriate. Such a determination is made by the multidisciplinary staffing team. If the multidisciplinary team concludes that the behavior is not disability related and the placement is appropriate, the findings are reported to the designated school personnel who has the responsibility to confer with the school board. The school board is the only authority in Iowa permitted to expel students. Before the school board expels the student, the parents must be informed of their right to file an appeal for an impartial administrative review. According to best practice, the student should not be removed from the current placement until approximately two weeks after notice is given to the parent to allow the parents to file with the Iowa Department of Education.

According to OSEP, Iowa is statutorily obligated to provide educational services to all students with disabilities, even if a student has been expelled by board action. Therefore, a student with a disability who has been expelled must have an educational program developed in a new IEP meeting.

Many legal experts familiar with special education law advise districts not to consider expulsion a viable option when considering disciplinary alternatives for special education students. These experts contend that districts should implement the steps to accommodate a program or placement change and not go through the expulsion procedures. Districts are reminded that suspensions and court injunctions can be used if there is concern for the safety of a student or for the safety of others.

Definitions

For the purposes of this paper, the following definitions have been used:

Crisis Intervention: The removal of a student from his or her classroom to allow intensive staff-student interventions to teach appropriate behavior. The interventions take place in the student's school attendance center and are covered in the student's IEP. The purpose of the removal is to teach appropriate behavior and not to punish the student.

Exclusion: A refusal to admit, being excluded. This term should not be used in describing the disciplinary removal of a student with disabilities from his or her current educational program.

Expulsion: The removal of a student with disabilities from an educational program for gross misconduct not related to the student's disability. The time period of the removal cannot exceed the remainder of a school year. The expulsion of a student with disabilities does not terminate educational services.

In-school suspension: An extended timeout procedure during which no effort is made to teach the student appropriate behavior and that prevents the student's progress on IEP goals and objectives. The in-school suspension must be considered as a suspension in the calculation of the total number of suspension days.

Suspension: The temporary removal of a student from his or her educational program that prevents the student's progress on IEP goals and objectives. Suspension is limited to 10 consecutive days in a single school year. Suspension for a significant part of a school day should be counted as one day of suspension.

Timeout: The removal of a student from his normal educational program for a short period of time, usually minutes, to allow the student to regain his or her self-control.

An Examination of Suspension and Expulsion Issues for Students with Disabilities in Iowa

Introduction

One of the major issues for school administrators that has emerged over the past several years involves knowing when and to what extent building and district disciplinary procedures, particularly suspension and expulsion, can be used with special education students. Confusion, controversy and uncertainty tend to be the result when school personnel struggle to stay within the legal parameters of the Education for All Handicapped Children Act of 1975 [EAHCA] (currently known as the Individuals with Disabilities Education Act or IDEA) and Section 504 of the Rehabilitation Act of 1973. Because neither law specifically addresses disciplinary procedures for students with disabilities, schools must rely on their own interpretation of the relevant regulations concerning a free appropriate public education (FAPE), the least restrictive environment (LRE), the individualized education program (IEP), procedural safeguards and due process. School district officials frequently cannot reach consensus in their attempt to interpret the regulations, leaving open to challenge a policy, procedure, or decision impacting students who need special education services. Some individuals and groups will debate whether suspension and expulsion are ever appropriate and seek a discourse beyond simply the legal issues.

These difficulties, when placed within the context of the entire general school population, can be overwhelming for decision makers. Data from such groups as the National Institute of Education, the National Education Association and the U.S. Department of Education indicate that discipline problems in the schools are severe (Baker, 1985). Experience has shown that public sentiment can influence school disciplinary policies, both negatively and positively. For example, students in one community are suspended after using profanity in a classroom; in another, a detention or a reprimand may be given.

Although students with disabilities are not exempt from being disciplined, their educational rights must not be abridged in the process of administering disciplinary procedures. Administrators must be aware of and function within legal restrictions in their attempt to manage and promote acceptable behavior of all students.

Some guidance on disciplinary procedures has been provided via policy letters from the U. S. Office of Special Education Programs (OSEP), decisions by state education agencies (SEAs) pursuant to IDEA and investigations and findings of the Office for Civil Rights (OCR) (Simon, 1984; Slenkovich, 1989). In addition, the education community, including parents and advocacy groups, has relied in the past and must rely in the future on significant court decisions to provide interpretations of existing laws and regulations related to suspension and expulsion.

As judicial cases and rulings are closely scrutinized, patterns, trends and principles are generated that not only influence other legal decisions, but also influence practice and thinking in special education programming for students with behavioral problems (Cullinan & Epstein, 1986). Clearly, the legal opinions provide both a framework and guideline for practitioners when addressing disciplinary procedures of students (Yell, 1989). School officials are advised to pay particular heed to six concepts from federal special education regulations that have been used by the courts to base decisions. These include: (1) FAPE, (2) LRE, (3) multidisciplinary IEP teams and appropriate placements, (4) IEPs,

(5) due process, and (6) the stay put provision (Adamson, 1984).

As a substantial body of litigation has emerged, the importance of becoming familiar with these rulings has increased. In fact, according to Hartwig, Robertshaw, and Ruesch (1991), "procedures governing suspension and expulsion of children with disabilities have been more thoroughly litigated than any other form of discipline" (p. 2). Unfortunately, the results of some of this litigation have been contradictory, leaving some of the issues pertaining to suspension and discipline unanswered or unclear.

The purpose of this paper is to examine and delineate the important issues surrounding suspension and expulsion. Those issues lacking clarity will be identified and discussed. Suspension and expulsion procedures that satisfy current legal requirements and recommended best practice based on the case law and research are outlined in another section of this document.

Suspensions

Before recommending suspension, a determination should be made that such action is appropriate for a specific student (Underwood, 1988). Zantal-Wiener (1988) reports that courts have ruled, "School districts must view a disruptive child with handicaps as a special education problem rather than a disciplinary problem" (p. 1).

Due process protections concerning suspensions for students with and without disabilities are governed by *Goss v. Lopez*, the first student suspension case to be decided by the U. S. Supreme Court (1975). According to this Supreme Court decision, before suspension all students are entitled to the following:

1. Oral or written notice of the charges immediately following the misconduct, that is, knowing the nature of the accusation and the evidence to support it.

2. An opportunity for the student to tell his or her version, without delay, in response to the accusations. Typically, this involves an informal discussion with the disciplinarian (Center, 1986; Center & McKittrick, 1987; Collins, 1990; Data Research, 1989; Gee & Sperry, 1978; Gelfman & Gutman, 1991; Goldstein & Gee, 1980; Hartwig et al., 1991; Hindman, 1986; Howe, 1980; Katsiyannis et al., 1989; Mehfoud, 1991; Simon, 1984; Slenkovich, 1987; Thomas & Walter, 1985; & Yell, 1989).

Although the *Goss v. Lopez* decision did not mandate that short-term suspension hearing procedures permit students to secure counsel, to examine and cross-examine witnesses, and to present witnesses, the court determined that such actions might be warranted under extended suspension situations, for example, when conflicting rebuttal is being provided and the disciplinarian wants to reduce the risk of suspending a student in error. ("Things are not always as they seem," the court wrote.)

The justices acknowledged that some students may need to be removed immediately from school without receiving prior notice if posing a threat to other students or to the academic process. In such instances, however, the notice and hearing should be provided as soon as possible after the removal (Goldstein & Gee, 1980; Huefner, 1991).

Issue: Can a special education student be suspended for more than 10 consecutive school days?

The due process guidelines of *Goss v. Lopez* appear to be applicable in short-term suspension cases (10 days or less) involving special education students, provided students with disabilities are disciplined in the same manner as nondisabled students.

Fundamental to these procedures is the understanding that special education suspensions can last no longer than 10 consecutive school days (Yell, 1989). Generally, the 10-day rule also applies to "transportation, non-academic activities such as athletics and other extra-curricular activities that are usually a part of the school program, such as glee club, school newspaper, cheerleading, etc." (Mehfoud, 1991, p. 10). Bartlett (1992) advises policy makers that removal for more than 10 days from extracurricular activities requires a re-evaluation, IEP team determination of appropriateness, and parent due process procedures. (For additional information about transportation and suspension issues involving students with disabilities, contact your AEA Director of Special Education.)

In a number of cases, indefinite, or lengthy suspensions (of more than 10 consecutive days) have been used by school officials but the courts have not tolerated attempts to disguise expulsions with suspensions (Yell, 1989). If the allowable 10-day suspension is lengthened, change in placement procedures for students receiving special education services automatically take effect (Bartlett, 1990, 1991; Thomas & Walter, 1985; Yell, 1989). Both OCR and OSEP have stated that suspensions longer than 10 consecutive days are treated as a change in placement necessitating EAHCA (now IDEA) procedures (Underwood, 1988). In other words, the terminology chosen by a district does not always determine the due process procedures to be used.

Several best practice procedures regarding suspensions of students with disabilities may be implemented, although none are mandated by IDEA. Hindman (1986) suggests that the student's placement should be evaluated, if only informally, following any suspension. If the placement appears to be inappropriate, for example, when interventions are not being used to meet the student's assessed needs, a formal staffing conference should be convened as soon as possible. The IEP should be reviewed to determine whether IEP goals and objectives need to be modified or changed in response to the behavior responsible for the suspension. If any changes are advised, a staffing team should be convened.

District administrators need to be aware that a suspension, when used, should function as an intervention to teach appropriate behavior or to protect the safety and welfare of pupils, not merely as a punishment for a student's inappropriate behavior. That is the reason IEP teams need early involvement to address the appropriateness of the intervention. Obviously, if an intervention (for example, a suspension) is repeated numerous times and improved behavior is not occurring, the intervention must be inappropriate, or at best ineffective. For special education students, the importance of collecting data to determine the effectiveness of an intervention in changing the student's behavior is paramount if the pupil is to succeed.

Given the wisdom of utilizing the best practice procedures outlined above, a district is advised to consider writing supplemental suspension procedures for those students with disabilities. Adopting differential policies will provide a district an opportunity to view a special education student exhibiting disruptive behavior as a special education problem rather than a disciplinary problem. However, the Council for Children with Behavioral Disorders (1989) offers a plan for flexible, unified school discipline policies. It recommends:

1. *A major discussion of the desired school climate and its elements.*
2. *A set of expectations regarding the types of*

behaviors necessary to achieve the school climate.

3. *A delineation of the instructional methods that will be used to teach those expectations, including the school's response to the acquisition of the expectations.*
4. *A section addressing the possible responses that might be taken to the violation of the expectations.*
5. *A delineation of procedure to implement those responses which treat all students in an individualized fashion.*
6. *A requirement that administrators keep records concerning the strategy selection for expectation violations. (p. 61)*

Perhaps one basic question needs to be asked: Did the student know that the behavior could lead to suspension prior to the violation? School officials should not assume that all students understand what behaviors constitute misconduct or that they are aware of the consequences. Therefore, the school should publish and disseminate rules in the form of a code of conduct that clearly identifies examples of offenses with the resultant consequences or range of penalties for misconduct. Furthermore, administrators should attempt to make certain that the rules are understood by staff members, parents and students. It is recognized that in some cases professional discretion is necessary. Efforts should be made, especially by the special education teacher, to ensure that students with disabilities understand the rules.

In conclusion, suspensions for students with disabilities can last no longer than 10 consecutive school days. Districts are encouraged to use several best practice procedures: (1) informally evaluate the student's IEP following any suspension, (2) consider a suspension as a possible intervention to teach appropriate behavior and not merely as a punishment, (3) collect data to determine whether the intervention is effective, (4) consider writing supplemental suspension procedures for students with disabilities, and (5) publish and disseminate rules in a code of conduct, with an effort toward making certain students with disabilities understand the rules.

Issue: Is a total accumulation of 10 days of suspensions in a school year prohibited?

Although court decisions, OCR, and OSEP have been quite clear regarding the 10-day consecutive suspension limit, they have not been as lucid regarding allowable, cumulative suspensions for nonconsecutive days during an academic school year.

In 1988, OCR issued a memorandum revising its original position that a series of short suspensions exceeding 10 days constituted a change of placement. In its revised interpretation, OCR said that each case must be decided on an individual basis. Not all nonconsecutive suspensions totaling more than 10 days would be regarded as a change of placement, depending on " 'the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school' " (Hume, 1988, p. 3; Zirkel & Mueller, 1989, p. 1). The example cited by OCR as constituting a definite placement change involved a child who was suspended eight or nine consecutive days, several times during an academic year. Bartlett (1991, p. 27) reports that "the OCR has officially interpreted most accumulations in excess of 10 days to violate Section 504."

On the nonconsecutive suspension issue, OSEP (1987) has stated:

> *The OSEP has not developed a position on when a series of shorter suspensions would cumulate to constitute a change in placement. We would encourage States and localities to be alert to*

the possibility that repeated discipline problems may indicate that the services being provided to a particular child with a handicap should be reviewed or changed; we have not, however, established a specific rule or guidance on how many nonconsecutive days a suspension constitutes a change in placement under EHA-B. (Underwood, 1988, p. 381)

Recommendations offered by individuals after interpreting OCR, OSEP, and *Honig v. Doe* vary. Slenkovich (1989a) advises LEAs to first look to their state rules and laws. If the rules and laws are not restricted by a specific number of days, she considers 20 to be the maximum allowable number for nonconsecutive suspensions in a given school year (assuming the other OCR recommendations have been followed). Bartlett (1989), Sendor (1988), and Underwood (1988) are more cautious. They believe that although *Honig v. Doe* did not specifically address the 10 cumulative school day issue, the Supreme Court accepted the position of the U. S. Department of Education that suspensions in excess of 10 days constitute a change in placement. Therefore, the prudent judgment, in their opinion, would be for school officials to treat accumulated suspensions exceeding 10 days as a change of placement; hence, IDEA due process procedures would then need to be followed.

Best practice advice is offered by Mehfoud (1991) and is helpful for district policy writers:

A judicious practice regarding multiple suspensions is to establish early warning checkpoints by requiring reconsideration of any student's program when: (1) the student receives ten days of suspension cumulative in a school year, or (2) the student is suspended three or more times during the school year. Imposing multiple suspensions on a student should raise questions concerning the cause of the student's misconduct or the appropriateness of the program. Before the worst occurs, it is prudent to review the student's situation to assure that the student is educated rather than simply removed. (p. 5)

Districts have been unclear whether the 10-day suspension "clock" starts again once the placement of a student with disabilities has been changed. In response to this concern, the Director of OSEP (Schrag, 1991) stated that if a student's placement has been changed through the appropriate procedures for reviewing the IEP suspensions can start anew. However, she cautioned that repeated inappropriate behaviors in new placements signal the need to examine whether appropriate educational interventions are being used.

In conclusion, a school district using a series of suspensions which collectively exceed 10 days places itself in a vulnerable position. Written policies outlining procedures for addressing suspensions for students with disabilities are encouraged.

Issue: Does in-school suspension count in the cumulative total?

Another controversial suspension issue is whether in-school suspensions are considered the same as out-of-school suspensions.

The Bureau of Special Education, Iowa Department of Education (DE) addressed the issue in a 1987 position paper entitled *Disciplinary Exclusion of Handicapped Students*:

Suspension is defined as the temporary exclusion of a pupil for ten days or less or a series of suspensions totaling ten days or

> *less in a school year. These procedures shall also apply for in-school suspensions when the student is excluded from the regularly scheduled school program in its entirety. (p. 9)*

According to conversations held with various school officials, some Iowa school districts have not used the above definitions because the position paper lacks the force of law as it is neither rule nor statute. Additionally, the statement concerning in-school suspensions does not appear to be usable by some administrators in their efforts to formulate district policy and procedure due to terminology differences (e.g., suspension, timeout, detention, and exclusion). A certain disciplinary procedure may be identified as a suspension in one district and an exclusion in another.

In two recent OCR complaint letters of findings specific direction has been provided. In one case, OCR reiterated its prior statement that a suspension of a special education student for more than 10 consecutive school days constituted a change of placement under 34 C.F.R. Section 104.35. It also restated its position that a series of suspensions which are each of 10 days or fewer in duration may create a pattern of exclusion that may constitute a change of placement. A revealing statement was included: "These requirements apply to out-of-school suspensions and to *in-school suspensions* [emphasis added] where, as here, handicapped students are excluded from their educational programs for the entire school day" (Smallwood, 1989).

In the second OCR complaint letter of findings, after listing its criteria for determining whether a series of suspensions resulted in a change of placement, the following comment was included: "OCR has also determined that the nature and quality of the educational services provided during in-school suspensions (ISS) must be compared to the nature and quality of education previously provided in order to determine whether ISS constitutes an exclusion (High, 1990)." In this particular situation, the district's in-school suspension program was found to be comparable to the nature and quality of educational services regularly provided to special education students. A certified special education teacher conducted the in-school suspension program and lesson plans were sent by the regular and special education teachers, and the IEP was followed. No more than five or six students were in the alternative classroom at any one time. The district's implemented formal disciplinary policies for special education students were also instrumental in the decision that the district was not in violation of Section 504.

In-school suspension *procedures* have not been expressly addressed by the courts. According to Bartlett (1990, 1991), several courts have upheld three and five day in-school suspensions. An assumption is made that in-school suspensions fall within the acceptable minor disciplinary procedures discussed by *Honig v. Doe* (Bartlett, 1989, 1991).

In-school suspensions are considered to be a viable alternative if the student is allowed to remain supervised while pursuing academic and social skill curricula (Center, 1986; Center & McKittrick, 1987; Hartwig et al., 1991; Nielson, 1979; Rose, 1988; Winborne & Stainback, 1983; Zantal-Wiener, 1988). The Iowa State Board of Education (1987) has encouraged the use of in-school suspension *in lieu of* out-of-school suspension. Center (1986) and Center and McKittrick (1987) offer numerous practical policy, curriculum and management considerations if the in-school suspension disciplinary procedure is to be used.

Related to in-school suspensions is the issue of timeouts. The scope of this paper is not intended to cover this issue in detail; however, the Mountain Plains Regional Resource Center (MPRRC) developed an Information Bulletin several years ago in

response to requests from numerous State Directors of Special Education and the document appears to be very comprehensive. Project FORUM at NASDSE (1991) also has reviewed timeout procedures for managing disruptive behaviors. One major distinction between suspensions and timeouts is the duration; a timeout is brief, usually minutes.

Procedural safeguards for timeouts have been derived from legal decisions. Recommendations from Gast and Nelson are reported in the aforementioned MPRRC bulletin and include procedures such as: (1) identifying the reinforcing situations which are maintaining the student's misconduct, (2) explicitly stating the behaviors resulting in timeout and including them on an IEP, (3) writing concise procedures to be followed, (4) maintaining records when timeouts occur, (5) evaluating the appropriateness of timeout durations in excess of 30 minutes with supervisory staff, and (6) evaluating the effectiveness of the timeout procedure with a team to include the parents. The Information Bulletin warns:

> *Finally, it should be remembered that the time-out procedure can be a controversial and politically charged issue. The development of time-out procedures requires and deserves precise reading of the political constraints to insure that this beneficial technique is not over-looked. (p. 8)*

Etscheidt (1992), reporting on a study done in 1986 by Zabel, also issued a warning after examining the legal considerations of timeout: "Field programs seemed weakest with regard to legal aspects, with only 22% reporting existence of district guidelines and 53% keeping written records" (p. 2).

In conclusion, in-school suspensions are allowed if they are 10 consecutive days or fewer in duration or if they don't interrupt the delivery of the IEP. In-school suspensions lasting longer than 10 consecutive days constitute a change of placement which activates required procedures. The more difficult issue revolves around whether a series of in-school suspensions 10 days or fewer constitutes a change of placement. The major consideration is whether the nature and quality of educational services regularly provided to special education students is comparable during in-school suspension. Since 1987 the Iowa DE policy paper has considered in-school suspension the same as out-of-school suspension both in terms of procedures to be used and number of days to be counted if a district is attempting to stay within the 10-day limit.

Another conclusion that can be drawn from the review of literature is that a district is well advised to have a written policy regarding how in-school suspension is to be implemented. OCR appears to offer the most direction for districts in regard to in-school suspension.

IEP considerations for student removal.

The present levels of educational performance (PLEP) identify weaknesses or needs and are one required component of an IEP, according to the federal regulations and Iowa rules. Goals and objectives are developed from the PLEP; consequently, when behavior problems are identified, goals and objectives shall address those behaviors.

Many districts are attempting to use the IEP process to address disciplinary considerations by outlining a behavior management plan (for example the Boys Town Model) and including the plan in the IEP document. This is particularly utilized for students who are classified as severely behaviorally disordered. The intent of the IEP team is to obtain parental consent to an intervention plan; hence, when the inappropriate behavior occurs, the consequence will be an implementation of the IEP instead of a confrontation with the parents over the disciplinary action (Mehfoud, 1991).

Some district and AEA personnel are of the assumption that such a system relieves them of having to be concerned with possible violations regarding the number of allowable days a student can be suspended, whether in-school or out-of-school. Some personnel are reporting that when a student is excluded, it is not acknowledged as any type of suspension; it is simply the action that occurs as part of the IEP management plan. According to one federal court case, the district referred to the suspensions as "easement days" (Bartlett, 1992). Numerous educational members of the IEP team also are advocating this method because, they believe, the IEP disciplinary program typically negates having to be concerned with certain procedures, such as the mandated components involved with change of placement.

Addressing a student's behavioral needs in an IEP is appropriate; however, several factors need to be considered. First, an IEP is supposed to be individualized and if the management system is identical for each student in the program, "individualization" is difficult to justify. Specified misconduct in certain management systems will result in predetermined consequences for BD students and certain "levels" are attained. Level Four might mean a mandated visit to the principal's office; in turn, the principal will call the parents to notify them to remove their child from school. The IEP team must be careful to address the issue of individualization in each management program.

Sometimes a student is sent to the principal's office because of the IEP management system and the administrator, at some point during the visit, will make a unilateral decision to suspend the student. *Honig v. Doe* was very clear in its decision that unilateral authority was not vested with administrators to suspend a student with disabilities for more than 10 consecutive days, particularly behaviorally disordered students (Yell, 1991). The burden of proof clearly rests with the district if the student has already been removed from the educational program more than 10 days.

Another factor to consider is the law that provides every special education student the right to receive a free appropriate public education. Justice Brennan, in delivering the opinion of the court in *Honig v. Doe,* reminded school officials that they had statutory obligations to provide a free appropriate public education in the least restrictive environment, to educate students to the maximum extent appropriate with children who are not disabled, and to consult with parents before choosing a placement. Brennan added, "Overarching these statutory obligations, moreover, is the inescapable fact that the preparation of an IEP, like any other effort at predicting human behavior, is an inexact science at best" (1988, 559:238). If the student is being removed from his or her educational program more than 10 times, even though the IEP addresses the consequence, again the district and AEA have the burden of proof to show that the student is not being denied FAPE, that the removal is appropriate, and that the intervention is working (L. Bartlett, personal communication, July 10, 1991).

Still another emerging issue is how far the school must go in informing the parents of their rights, e. g., is the IEP team obligated to inform the parent that the proposed IEP might not be upheld by an administrative law judge? Bartlett (1992) reviewed court decisions, OSEP interpretations and state level administrative law judge (or hearing officer) decisions and concluded that an IEP does not allow for indefinite and unilateral removal of students for disciplinary reasons unless the removal is 10 days or less. He stated that "unilateral suspensions of 10 days or more without re-evaluation, IEP team determination of appropriateness and parent due process violate federal law" (p. 8). In addition to the ruling in *Honig v. Doe*, he cited several other cases, one of which was a federal court decision in which a district was required to provide

compensatory education to a student after the parents refused to include in the IEP a provision for unlimited suspensions for disciplinary reasons and the district refused placement. Another citation involved a state hearing officer who ruled that parents are not required to go to the school to remove the student when the student misbehaves as a condition of an IEP.

Many school officials do not believe the school has any obligation to inform parents of such court decisions and interpretations. (A question can be posed: If a state has a rule against corporal punishment, can the district personnel suggest corporal punishment as part of a behavior management system to be listed on the IEP?) Because of the confusion that exists about disciplining students with disabilities, a best practice suggestion is to keep minutes at the IEP meeting to reflect such things as the information given to the parents, the decisions of the IEP team, and the reason for the decisions. Parents should also be advised of their right to appeal the decision.

Possible negative consequences of suspension.

Although both suspension and expulsion are recognized by some educators as appropriate disciplinary tools to maintain order, very little empirical evidence exists to support this assumption. Rose (1988) has concluded that the most thorough descriptive study of the use of suspensions in the public schools was reported by Wu, Pink, Crain, and Moles in 1982. This research indicated that low socioeconomic, urban, male, minority students who were underachieving or low-achieving were among the groups most likely to be suspended from school.

According to Kaeser (1979), the only uniform source of data collection on the use of suspension in the United States comes from OCR. Although recent statistics are not found, those that were available appear to support the findings of Wu et al. (1982).

Information concerning suspensions for the nondisabled is limited; however, even less is known about special education students. The paucity of research in that area was the impetus for Rose's study in 1988. His findings described disciplinary practices with handicapped students as "the types of disciplinary practices used in any given school may be a function of where and in what size community that school is located, the principal's sex and the number of years he or she has been a principal, and the grade level of the school" (p. 237). Another statewide study (Katsiyannis et al., 1989) revealed that students with learning disabilities were suspended at a much higher rate than other categories of students with disabilities, although one explanation offered was that the number of LD students was higher than the other categories.

In an article concerned with the possible misuse of suspension, Kaeser (1979) identifies three shortcomings with this practice: (1) the student's guaranteed access to public education is withdrawn temporarily; (2) the student's reputation can be damaged because he or she can be labeled a troublemaker, possibly leading to school failure; and (3) a student's educational performance can be damaged.

Exploring alternatives to suspensions.

Before a decision is made to suspend a student a second time, one basic question needs to be asked: Did the behavior change due to the previous suspension intervention? If repeated suspensions failed to change behavior, as indicated through documentation, clearly other alternative interventions must be explored. According to the *Honig v. Doe* decision, schools can use the normal disciplinary procedures with children with disabilities to include study carrels, timeout, detention, the restriction of privileges, and temporary suspension of up to 10 school days (Bartlett, 1989; Brennan, 1988; Yell, 1989). School districts need to adopt further alternative solutions. These should include a diagnostic prescriptive

approach to analyzing problem situations "and in as much as possible proact to those situations in a problem solving way rather than reacting in a blameful and judgmental manner which leads to a punishment system being implemented" (Ellzey, Wells, & Baldwin, 1983, p.12). Often, the involvement of already existing support services such as the school psychologist, special education consultant, school social worker, and school guidance counselor can prove beneficial in developing both the plan for intervention alternatives and the direct services to the student called for by the intervention plan.

Other alternatives to consider when a student's behavior is disruptive include (Ellzey et al., 1983, p. 3):

a. *additional related services,*
b. *a change in disciplinary procedures,*
c. *increased time in the current special program,*
d. *provision of a special program in another setting including, but not limited, to special schools, homebound, hospitals and other institutions,*
e. *involvement with programs funded by other agencies.*

Ellzey et al. (1983) offer additional considerations such as a complete review by the school's Child Study Team, conducting a re-evaluation, conferencing with parents, and exploring other options such as alternative schools. Other suggestions include:

a. *Time out area within the classroom*
b. *Time out room*
c. *Peer facilitator program*
d. *Behavioral instruction*
e. *Crisis intervention services*
f. *Life space interview*
g. *Behavior contracting*
h. *Situation specific skills (p. 2)*

Expulsion

When school officials consider expelling a student requiring special education, they must be aware that the proposed action must be in accordance with IDEA due process procedures and safeguards. Removing a student from the current placement for a period exceeding 10 school days is considered a change of placement, a point on which the courts have unanimously agreed (Bartlett, 1989, 1990, 1991).

When the change of placement procedures are triggered, the district first must provide written notification to the child's parent or guardian. Such notice must include the purpose for the meeting and provide specific, detailed information regarding the misconduct. Furthermore, the parent must be given reasonable and adequate notice, thereby ensuring purposeful involvement and participation by the parent (Underwood, 1988).

Second, a reevaluation must be conducted. The results will be used to determine: (a) whether the behavior is a manifestation of the student's disability (an extremely critical distinction and central to the extra protection given to students with disabilities), and (b) whether the student's current placement is appropriate. School officials are required to inform parents that they have a right to request an independent evaluation at public expense to determine the student's educational needs.

The responsibility (or burden) of making these two determinations is emphatically placed on the IEP team (Zantal-Wiener, 1988). This specialized and knowledgeable group of persons shall include, according to IDEA regulations, a representative of the LEA, the student's teacher, the parent(s) or guardian, and when appropriate, the student. Additionally, Iowa requires a member of the diagnostic-educational team and a teacher or other specialist with expertise consistent with the student's

disability (IAC 281--41.18(281)(2)b). The parents, LEA, or intermediate agencies are permitted to include other individuals they deem appropriate at this IEP staffing meeting. Neither school boards nor superintendents have the authority under law to expel a special education student at this stage.

Yell (1989) contends that even if an IEP team found no relationship between the disability and the misconduct, the district still would be in a "legally precarious situation," given the *Honig v. Doe* decision and existing case law. Bartlett (1989) identifies still another dilemma for the IEP staffing team: the courts have not been consistent regarding "the degree of direct causation that must exist between a student's handicap and his or her misbehavior to be protected from expulsion" (p. 360). Therefore, trying to establish a causal relationship could be termed an exercise in futility (Dagley, 1982).

Center and McKittrick (1987) suggest that multidisciplinary IEP teams should use two of three approaches when determining linkage between the behavior and the disability: (a) scrutinize all of the student's records for evidence of past problem behavior, and either (b) review documented characteristics of all special education students within the district having the same disability as the student being considered for expulsion; or (c) review the behavioral characteristics of each disability according to research studies. The whole child must be considered, however, and the team cannot focus entirely on the label or the identified disability (Underwood, 1988). Yell (1989) recommends using a process outlined by P. E. Leone that includes reviewing the academic and disciplinary records, in particular looking for trends and patterns that might not be noticeable without careful scrutiny. This process includes a great deal of deliberation and use of professional judgment.

If the misbehavior is a manifestation of the disability, the courts have unanimously ruled that a student cannot be expelled. The courts have reasoned that expulsion would be discriminatory if the student was exhibiting behavior that was disability related. If the behavior is not related to the disability, however, the student may be expelled, depending on whether the IEP team determined the placement to be appropriate. If a special education student is expelled, an alternative special education placement must be provided.

The "appropriate placement" procedure used by many teams has its critics also. Most teams decide that the appropriate placement requirement has been met because IEPs and records usually support current placements (Thomas & Walter, 1985). Given its statutory duty to provide an appropriate program for each student, a finding that the placement was not appropriate at the time of the misconduct is tantamount to an admission by the school officials that they had violated the law. In addition, many IEP teams primarily focus on whether the infraction was a manifestation of the disability instead of making a concerted effort to reevaluate the student's current program (Zantal-Wiener, 1988). With an inappropriate placement the student has been "placed in double jeopardy by punishing him for circumstances created by the school district over which he has no control" (Ludlow, 1982, p. 16). Moreover, courts have held that improper placement can cause disruptive behavior.

If the behavior is not disability related and the placement is appropriate, the team should report its findings to the designated school personnel. Even then, the IEP team cannot make a recommendation for expulsion. Such a determination remains outside the scope of its charge. Within Iowa, only the local school board has the authority to expel any pupil from school (Iowa Department of Education, 1990).

The courts have held that no category of a disability can be immune when determining whether the misconduct is a manifestation of

the disability. Although behaviorally disordered students generally may not be expelled, the IEP team cannot assume that a student with another disability label should be expelled because the disability is not emotional or behavioral (Bartlett, 1989; Collins, 1988; Yell, 1989).

Slenkovich (1987) counsels school officials to advise IEP teams to ask, "Does that kind of disability *cause* that behavior?" or "Is the misconduct a direct manifestation of the handicap?" In her opinion, such an approach can produce a different response than, "Is there a relationship between the behavior and the handicapping condition?" She cited the example of a learning disabled student with a processing problem and maintained that an IEP team could never determine that the processing problem *caused* any violation of school rules. Therefore, she concluded, the LD student would be required to follow the customary disciplinary procedures for the nondisabled, assuming the placement was appropriate. Such an approach, however, places an emphasis on the label and not on the entire child. For instance, many students with LD have behavior problems that are identified on the IEP and should be considered by the IEP team when determining relationship issues.

IEP teams must adhere to making decisions through consensus when reaching agreements. If consensus cannot be reached between school personnel and parents, the educational staff members have the responsibility to formulate a plan and advise the parents of their due process rights to a hearing (Bartlett, 1989; Slenkovich, 1989a).

The practical proactive approach to use when implementing special education disciplinary procedures is to identify and discuss the special education student's inappropriate behaviors at an IEP meeting. Attention should be given to methods and strategies that could assist the student to learn appropriate behaviors. Examples of interventions can be found in the *Iowa Program Standards for Interventions in Behavioral Disorders* (Sodac et al., 1988), published by the Iowa Department of Education. A proactive approach would ensure that the special education student had an individual program to remediate his or her inappropriate behavior instead of depending on general school rules, especially those that might impede treatment. This procedure also has the advantage of providing alternative, appropriate techniques to educators who lack the expertise to manage aberrant types of behaviors.

The Iowa Association of School Boards (1988) also encourages the proactive stance of using the IEP process with parental participation as the centerpiece of one of the ways to handle potentially dangerous children with disabilities following *Honig v. Doe*. A special report reads, "Nothing in the Court's opinion prevents the inclusion in the IEP of an *appropriate plan* [emphasis added] for disciplining a handicapped student in the event any dangerous or disruptive conduct should occur" (p. 2).

Bartlett (1989), Lichtenstein (1980), and Yell (1989) all advise districts not to consider expulsion a viable option when considering disciplinary alternatives for special education students. All recommend implementing the necessary steps to accommodate a program or placement change, that is, a more restrictive or otherwise different environment. Yell's rationale is due, in part, to his fear of liability for school officials if an expulsion case should go to court, given the *Honig v. Doe* decision and existing case laws. He contends that "a good attorney could probably convince a court that misbehavior is always related to the handicapping condition" (p. 66).

If all of the prescribed change of placement procedures are followed and the decision by school officials is expulsion, the parents must be informed of their right to file an appeal for an impartial administrative review. Collins (1991) recommends that a

change of placement should not occur "for approximately two weeks after the notice is given to the parent or guardian, to allow for the filing of an appeal" (p. 7). During the pendency of the review, should one be requested, the student is allowed to "stay put" in his or her current educational program, regardless of the perceived degree of danger from the youngster (Huefner, 1991; Symkowick, 1989). Both OSEP and OCR administer specific regulations that require the involved child to remain in his or her present educational setting, unless a court injunction as discussed in the next paragraph is granted.

The school cannot unilaterally remove the youngster from the current placement. This is regarded as the most substantive conclusion emerging from *Honig v. Doe*. When parents of a truly dangerous student refuse an offer of an interim placement, the school can suspend the student for 10 days (or the days left of the allowable 10 days in a school year) and use this time to seek a temporary court injunction to bar the student from attending school. However, the court order will afford the school only a temporary reprieve. The burden is on the district to prove that the student is likely to injure others (or himself or herself) if he or she is allowed to return to school (Bartlett, 1989; Davila, 1991a, 1991b; Zantal-Wiener, 1988; Zirkel, 1988, 1989).

The extent of the educational services required during an expulsion had been unclear until OSEP disseminated a policy letter in 1989. Acknowledging that OCR may allow for the cessation of special education services during an expulsion resulting from misbehavior that is not related to the student's disability, OSEP concluded that educational services could not be terminated under such circumstances. The letter reads:

> *States receiving EHA-B funds are statutorily obligated to provide eligible children with handicaps with educational services, including during those periods of long-term suspension or expulsion where such disciplinary action results from misbehavior that is not a manifestation of the child's handicap. (Davila, p. 213:259)*

This position has been reaffirmed numerous times since the original letter by Robert R. Davila, Assistant Secretary, Office of Special Education and Rehabilitative Services (OSERS), U. S. Department of Education (Davila, 1989, 1990, 1991a, 1991b; National Association of State Directors of Special Education, 1992). In an August 1991 U. S. District Court decision, a judge ruled that the U.S. Department of Education may not enforce the OSERS provision in Indiana. A spokeswoman for the department has said that the decision will be appealed and "our policy is going to stay the same for the rest of the country" (Education of the Handicapped, 1991, p. 3). The appeal was filed October 15, 1991, by OSERS with the Seventh Circuit Court of Appeals (Individuals with Disabilities Education Law Report, 1991).

Conclusions

An important but controversial issue that has emerged recently is knowing the extent to which school administrators can use suspension and expulsion procedures with students with disabilities. Although some educators would contend that a double standard exists for nondisabled and disabled students, the fact remains that certain additional procedural safeguards are in place for special education students. Whether one agrees or disagrees with the so-called preferential treatment given to these students is moot. Statutory acts, namely IDEA and Section 504, as well as significant court decisions have provided procedural protections to special education students beyond those for the general school population. The primary reason for these

safeguards is to ensure that the federally mandated rights of students with disabilities are not compromised.

Although procedural protections are provided, this does not mean that special education children cannot be disciplined. The specialized and knowledgeable IEP team has been empowered to most effectively address individual problem behaviors. Individual goals and objectives for appropriate behavior should be included on the IEP.

Obviously, a large number of teachers and principals consider suspension and expulsion to be helpful tools when a student's behavior is unacceptable. The greater concern is whether suspension and expulsion improve behavior or solve the underlying causes of misbehavior. Certainly, such a determination would address the appropriateness of the procedure for each individual student. One technique to assess whether suspension is an effective and successful strategy is to count the number of days the district has suspended a particular student. Multiple suspensions would indicate the practice is not beneficial to the student and another alternative should be implemented (Center & McKittrick, 1987).

Recommendations

An examination of the suspension and expulsion issues indicates several actions are recommended. First, data on the number of suspensions and expulsions in Iowa would be helpful to better understand the scope of the problem. Although the DE plans to address what is clearly a major concern for the SEA, AEAs, LEAs, parents, and advocacy groups, the possibility exists that the strategy will not attack the problem adequately if it is found the problem is greater than anticipated.

Second, clear definitions must be formulated for such terms as suspension, in-school suspension, expulsion and exclusion. Uniformity of definitions must prevail if the procedural safeguards are to be given to all special education students, regardless of the district of residence. Recommended definitions are included at the beginning of this document.

Third, the DE must establish policy on any issues that are unclear or not addressed by the courts, for example the 10-day nonconsecutive suspension issue. The process for determining and formulating these positions should be based on public participation from a broad array of constituencies.

Fourth, a greater awareness must be created relative to the "best practice" procedures that can be used by LEAs and AEAs when addressing the suspension and expulsion issues. In this endeavor, LEAs and AEAs should first approach the problem from a proactive stance, with emphasis on prevention and alternatives. The Iowa State Board of Education (1987) requested local school boards:

> *To reevaluate existing disciplinary codes and, in cooperation with administration, faculty, students, and concerned patrons of the district, to revise the rules and punishments for rules violations to enable students to stay in school and receive credit for work performed to expectations. (p. 1)*

To cite another proactive "best practice" example, each school should publish and disseminate a set of criteria that clearly identifies specific violations with the resultant consequences or range of consequences for misconduct. Furthermore, the administrators should attempt to make certain that the rules are understood by staff members, parents and students (Center & McKittrick, 1987). Examples of suspension and expulsion procedures are provided in this document.

Last, the Iowa Department of Education needs to address the suspension and expulsion problem in the Iowa Administrative Code through the rule promulgation process.

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Premise Statements Concerning Suspensions and Expulsions

- A district should examine its policies and procedures to determine whether these policies and procedures negatively affect special education students. The Department of Education has published a document entitled *Inventory of Policies and Practices Related to Student Failure and Dropping Out* (1989). This publication is recommended for any district seeking to emphasize prevention and alternatives when addressing the suspension and expulsion issues.

- An important axiom for a school district is to view a special education pupil exhibiting disruptive behavior as a potential special education appropriate program issue rather than a disciplinary problem.

- The practical proactive approach to use when implementing special education disciplinary procedures is to identify and discuss the special education student's inappropriate behaviors at an IEP meeting. Multidisciplinary IEP teams have been empowered most effectively to address individual problem behaviors.

- A district should collect specific data related to suspensions and expulsions, e.g., the data could include such things as student characteristics, the nature of the misconduct, the time and location of the misconduct, and the name of the school. Profiles could be collected for individual students and buildings, as well as for the district. Such data could target problems areas.

- If suspension and expulsion procedures are utilized for special education pupils by a district or AEA, the goal should be to improve behavior or solve the underlying causes of misbehavior. The procedures should not be used merely as a punishment for a student's inappropriate behavior. Data should be collected on the effectiveness of the use of suspensions and expulsions as interventions to teach the student appropriate behavior.

- If a student receives multiple in-school or out-of-school suspensions within a school year, this typically signals that the suspensions are not effective and other alternatives should be used. The goal of the school district is to discover strategies that are successful for each individual student.

- School district personnel should be aware that negative consequences of suspensions may occur, e.g., the student's guaranteed access to public education is withdrawn temporarily; the student's reputation can be damaged because he or she may be labeled a troublemaker, possibly leading to school failure; and the student's educational performance can be damaged.

- The importance of student handbooks cannot be overlooked when addressing suspension and expulsion issues. Each school should publish and disseminate a set of criteria that clearly identifies examples of offenses with the consequences of misconduct. Administrators should attempt to make certain that the rules are understood by staff members, parents, and students, and, to the extent possible, applied consistently to all students.

Overview of Judicial System

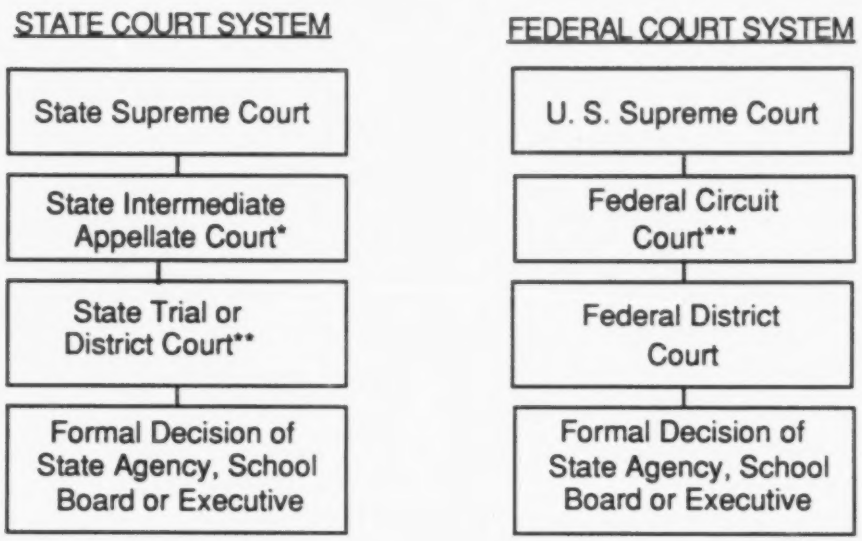
To understand the importance of judicial decision making when considering suspension and expulsion issues, a basic knowledge of the structure of our judicial system is required. The state and federal court systems are arranged in a hierarchical order. The figure below depicts the typical state court system and shows the federal system (Data Research, 1989).

Following the formal decision of the state educational agency (SEA), the party filing an appeal typically has the option of pursuing said appeal to either the state or federal judicial system.

Supreme Court decisions become the law of the land; however, the number of decisions impacting special education students are few. In fact, only one Supreme Court case, *Honig v. Doe*, specifically dealt with the discipline of special education pupils.

Court decisions, trial and appeals court decisions also create important legal precedents. Appellate court decisions have the effect of binding lower courts (and administrators); hence, they have the effect of law within their court system (Data Research, 1989).

Although state and federal courts generally function independently of one other, judges at all levels frequently consider, but are not bound by, decisions from other courts.


STATE COURT SYSTEM
State Supreme Court
State Intermediate Appellate Court*
State Trial or District Court**
Formal Decision of State Agency, School Board or Executive
FEDERAL COURT SYSTEM
U. S. Supreme Court
Federal Circuit Court***
Federal District Court
Formal Decision of State Agency, School Board or Executive

* Sometimes called court of appeals.
** Sometimes called a trial court, county court, common pleas court or superior court.
*** The appeals are heard from the district courts located within their circuit. Iowa is in the Eighth Circuit.

Suspension and Expulsion Procedures

Suspension Procedures

Definition

Suspension of a student with disabilities should be considered only as a last attempt to teach a student appropriate behavior or as an emergency measure to protect the health, safety or welfare of the student or others. Suspension should not be used merely as a punishment for a student's inappropriate behavior. The restrictive nature of suspension should eliminate the use of this consequence as a standard response to a certain number or type of inappropriate classroom behaviors. A suspension should not be imposed if alternative interventions for teaching appropriate behavior can be employed.

For the purpose of this paper, suspension is defined as the temporary removal of a student from his or her educational program that prevents the student's progress on IEP goals and objectives. Suspension for a significant part of a school day shall be counted as one day of suspension.

In-school suspension shall be considered the same as an out-of-school suspension, if, in the opinion of the school team, the in-school suspension prevents the student's progress on IEP goals and objectives. If the student is given an extended timeout, during which no effort is made to teach the student appropriate behavior, then this timeout must be considered as an in-school suspension. In-school suspensions must be considered as a suspension in the calculation of the total number of suspension days.

Removal of a student from his or her classroom to provide a time for intensive staff-student interactions aimed towards teaching the student appropriate behavior is a crisis intervention and not an in-school suspension. These intensive staff-student interactions should be described in the student's IEP. A crisis intervention should not be considered in the calculation of the total days of suspension for the student.

Removal of a student from his or her classroom to provide a short timeout procedure for the purpose of allowing the student to regain his or her self-control should not be considered as an in-school suspension.

Procedures

A review of OSEP and OCR interpretations and court cases concerning suspension, particularly *Goss v. Lopez* (1975) [95 S.Ct. 729] and *Honig v. Doe* (1988) [56 S.Ct. 27], indicates that the following procedure shall be followed when considering the suspension of a student with disabilities.

1. The principal conducts a meeting with the student as soon as possible after the misbehavior has occurred. During the meeting the student shall be given:
   a. Oral notice of the accusations against the student.
   b. An opportunity to respond to the accusations.
2. If the principal determines that safety and welfare concerns necessitate that the student immediately leave the school building, the principal may suspend the student by giving the student an oral reason for the suspension.
3. The principal provides oral or written notice pertaining to the decision on the intended suspension of the student to the student's parents.
4. If the student is suspended for 10 consecutive school days in a single

school year, the IEP team shall meet to consider the appropriateness of the student's program and the relationship of the student's misconduct to the student's disability. Suspension of a student for 10 consecutive school days in a single year is considered a change of placement and requires a comprehensive educational reevaluation and a staffing team determination of the appropriate placement for the student.

Best Practices

In addition to the required procedure outlined above, the Bureau of Special Education suggests that school districts and area education agencies also consider including the following steps within their suspension procedure:

1. Before considering the suspension of the student, the school official should determine if the student's IEP has established disciplinary consequences for the misconduct in question. The school official should also meet with member(s) of the IEP team to discuss the student's misconduct and to consider alternative interventions to teach appropriate behavior.

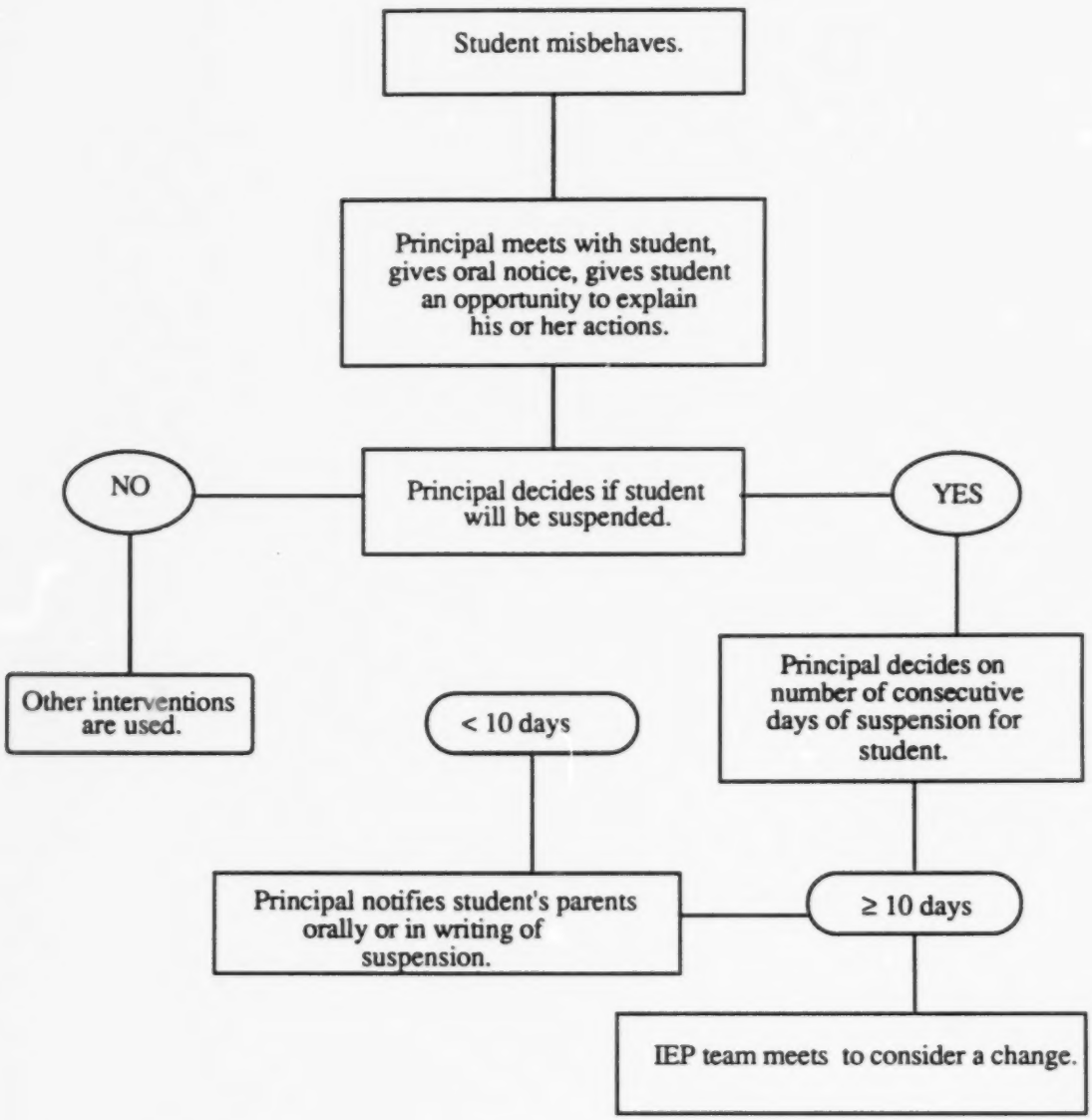
2. If the school official recommends that the student be suspended, the school official should immediately notify the superintendent of schools (or designated school official) of the recommendation for suspension.

3. An IEP team meeting should be scheduled after the student has been suspended for a total of five school days in a school year. At this meeting the IEP team should review the behavioral management goals and objectives of the student's IEP.

4. Given the importance of adherence to the legally required procedures for the discipline of special education students, school officials should consult with their school district's attorney before or during the suspension procedure.

5. When the student has been suspended for 10 cumulative school days in a single school year the IEP team should consider the appropriateness of the student's program and the relationship of the student's misconduct to the student's disability. Suspension of a student for a cumulative total of 10 school days in a single year is considered by many legal and educational experts to be a change of placement and thus requires a comprehensive educational reevaluation and an IEP team determination of the appropriate placement for the student.

Suspension Procedures


Student misbehaves.
Principal meets with student, gives oral notice, gives student an opportunity to explain his or her actions.
Principal decides if student will be suspended.
NO
YES
Other interventions are used.
Principal decides on number of consecutive days of suspension for student.
< 10 days
≥ 10 days
Principal notifies student's parents orally or in writing of suspension.
IEP team meets to consider a change.

Expulsion Procedures

Definition

School districts should understand that the expulsion of a student with disabilities is no longer considered a disciplinary option by a significant number of legal experts following the *Honig v. Doe* Supreme Court decision. Therefore, those school districts that continue to choose expulsion as a disciplinary option need to be aware of the potential legal consequences.

For the purpose of this paper, expulsion is defined as a Board of Education action for gross violations leading to the student being removed from the school program for a period of time not to exceed the remainder of the current school year. The expulsion of a student with disabilities shall be considered as a change of placement and not the termination of all educational services in accordance with Section 282.3(1) of the Iowa Code.

Students with disabilities receive protection under the Education for All Handicapped Children Act (EAHCA). The EAHCA (now IDEA) established the right of all students with disabilities, regardless of the severity of their disabilities, to a free appropriate public education. The courts and OSEP prohibit the expulsion of a student with disabilities for misbehavior that is a manifestation of the student's disability.

The determination of the relationship of the misbehavior to the student's disability is the responsibility of the student's IEP team. The decision in *Honig v. Doe* prohibits unilateral changes in the placement of a student by a school official. School administrators should be aware that the school board may not consider the expulsion of a student with disabilities until the student's IEP team has reported on (a) the relationship of the student's inappropriate behavior to his disability and (b) the appropriateness of the student's current educational program.

Procedures

A review of OSEP and OCR interpretations and court cases concerning expulsion, including *Honig v. Doe* (1988) [56 S.Ct. 27], indicates that the following procedure shall be followed when considering the expulsion of a student with disabilities.

1. The principal conducts a meeting with the student as soon as possible after the misbehavior has occurred. During the meeting the student must be given:

   a. Oral notice of the allegations against the student.

   b. An opportunity to respond to the allegations.

2. If the principal believes that the student should be considered for expulsion he or she makes a referral to the IEP team to review the student's educational program. The IEP team's review must occur prior to the principal making a recommendation to the school board or any other advisory body as to the expulsion of a student with disabilities.

3. The IEP team shall meet to consider the relationship of the student's inappropriate behavior to his or her disability and to consider the appropriateness of the student's current educational programming. The IEP team shall consist of a representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education; the pupil's teacher; a member of the diagnostic-educational team; a teacher or other specialist with knowledge in the identified disability area; one or both of the pupil's parents (subject to rule 41.31 of the Rules of Special Education); the pupil, if appropriate; and other individuals as designated by the parents, school district or director.

4. The IEP team shall provide a report to the principal that contains information on the perceived relationship between the student's misbehavior and the student's disability and the appropriateness of the student's current educational programming. The IEP team does not recommend whether or not the student should be expelled. The IEP team does decide whether or not the student may be considered for expulsion by the school board.

   If the IEP team determines that the student's misconduct is related to the handicapping condition or that the student has been placed in an inappropriate program the student may not be expelled. The IEP team may consider a change of placement for the student following procedural safeguard requirements.

   If the IEP team determines that the student's misconduct is not related to his disability and that the student's current educational program is appropriate, a school official may recommend to the school board that the student be expelled. Parents shall be informed of their right to file an appeal for an impartial administrative hearing. Stay put provisions would then remain in effect during the administrative hearing process.

5. If the school board decides that the student will be expelled for a period not to exceed the remainder of the school year, the IEP team shall meet again to determine an appropriate alternative educational program for the expelled student. Expulsion of a student with disabilities does not mean that educational services are terminated. The nature of these educational services shall be determined by the student's IEP team.

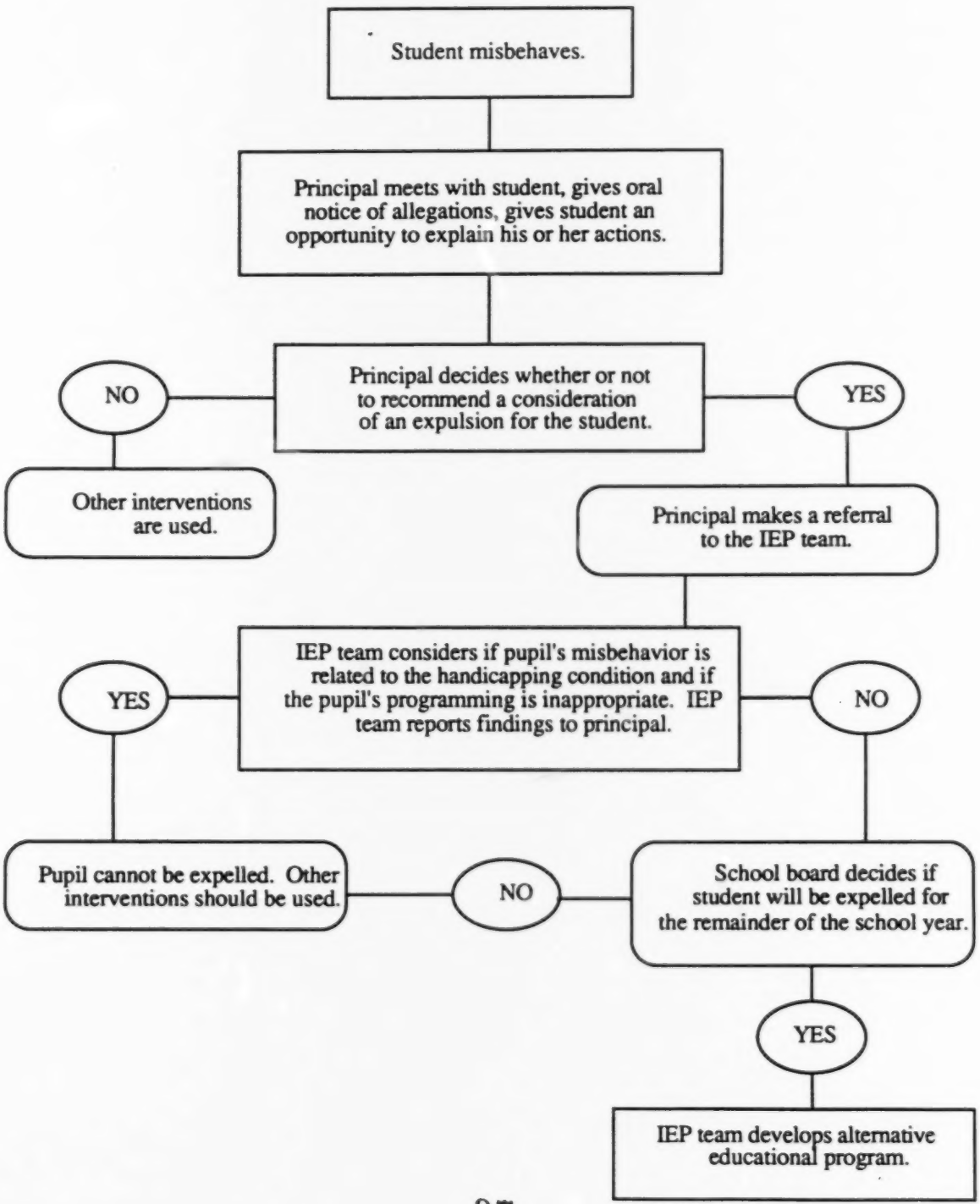
Best Practice

In addition to the required procedure outlined above, the Bureau of Special Education suggests that school districts and area education agencies also consider including the following steps within their expulsion procedure:

1. If a school official recommends that the student be considered for expulsion, the school official should immediately notify the superintendent of schools (or designated school official) that the student is being considered for expulsion. If the superintendent is in agreement with the consideration for expulsion, (s)he shall immediately notify the student's parents and the AEA Director of Special Education pertaining to the decision to consider the expulsion of the student.

2. Given the importance of adherence to the legally required procedures for the discipline of special education students, school officials should consult with their school district's attorney before and during the expulsion procedure.

Expulsion Procedures


Student misbehaves.
Principal meets with student, gives oral notice of allegations, gives student an opportunity to explain his or her actions.
Principal decides whether or not to recommend a consideration of an expulsion for the student.
NO
YES
Other interventions are used.
Principal makes a referral to the IEP team.
IEP team considers if pupil's misbehavior is related to the handicapping condition and if the pupil's programming is inappropriate. IEP team reports findings to principal.
YES
NO
Pupil cannot be expelled. Other interventions should be used.
NO
School board decides if student will be expelled for the remainder of the school year.
YES
IEP team develops alternative educational program.

History and Summary of Court Cases Pertaining to Suspension and Expulsion

Wood v. Strickland (1975). The Supreme Court determined that education is a property right and that a student may not be deprived of education without due process of law.

Goss v. Lopez (1975) [95 S.Ct. 729]. The Supreme Court defined the due process rights of all students prior to removal from school. The court said that every student was entitled to:

1. Some kind of hearing.
2. Some kind of notice of what he or she is accused of and the basis for the accusation.
3. An opportunity to tell his or her side of the events.

Doe v. Koger (1979) [480 F.Supp. 225]. The court determined that expulsion was an acceptable intervention for a student with disabilities if the student was being served in an appropriate educational program. The court affirmed that "between a handicapped child and any other child, the distinction is that, unlike any other disruptive child, before a disruptive handicapped child can be expelled, it must be determined whether the handicap is the cause of the child's propensity to disrupt and this issue must be determined through the change of placement procedures required by the Handicapped Act."

S-1 v. Turlington (1981) [635 F.2d 342]. The court affirmed that the expulsion of a student with disabilities is a change of educational placement and thereby invokes the procedural safeguards of the Education of All Handicapped Children's Act of 1975. The court also established that before a student with disabilities can be expelled by the local school board, the IEP team must consider the relationship of the student's misconduct to his disability.

Kaelin v. Grubbs (1982) [682 F.2d 595]. The court also found that expulsion is a change of placement. The court took the position that a student with disabilities may be expelled in accordance with due process procedures, but that a complete cessation of educational services cannot take place.

School Board v. Malone (1985) [762 F.2d 1210]. The court determined that even an indirect relationship between the student's misconduct and the student's disability prohibits the school district from expelling the student.

Doe v. Maher (1986) [793 F.2d 1470]. The court affirmed that a student with disabilities cannot be expelled if the misconduct is related to the student's disability.

Honig v. Doe (1988) [56 S.Ct. 27]. The Supreme Court determined that suspension of a student with disabilities for more than 10 days in a school year constitutes a change of placement under P.L. 94-142. The court determined that a school district may use the student's 10 days of suspension to seek assistance of the courts to remove the student from school if "maintaining the child in his/her current placement is substantially likely to result in injury to himself [sic] or others." The Court held that the EHA (now IDEA) does not permit school officials to remove a student from school unilaterally. Suspension from school for more than 10 days is a change in placement. The "stay put" provision of the law requires the student to remain in the then current placement pending review by the IEP team. Although school officials may not change a student's placement without going through the Act's procedure, the Supreme Court held that the Act would not prohibit a court from issuing an injunction barring the student from school pending a full review of the student's placement.